THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 5081 of 2000

DATED 30-01-2006

Between:

Smt.R.Anitha.

..... PETITIONER

AND

Government of Andhra Pradesh,

Education Department,

Secretariat, Hyderabad and others.

.....RESPONDENTS

ORDER:

In this writ petition, the petitioner seeks a writ of Mandamus declaring the action of the first respondent in rejecting the appeal, vide Memo No.27753/PS-1/98-5, dated 23-12-1999 and consequent orders of the 5th respondent in terminating her services, vide proceedings dated 23-03-2000, as arbitrary and illegal.

The first respondent, vide proceedings dated 23-12-1999, informed the second respondent that the request of the fifth respondent for absorbing the petitioner from the unaided post to the aided post was rejected. The second respondent was requested to direct the fifth respondent to fill up the vacancy, following the procedure prescribed in G.O.Ms.No.1, dated 01-01-1994 and as per the orders in existence. Consequent thereto, the fifth respondent, vide proceedings dated 23-03-2000, informed the petitioner that in view of the orders of the first respondent, in memo dated 23-12-1999, the Management had no alternative option except to terminate her services as it was not in a position to feed her any more with salary from its funds, due to lack of funds.

The relief sought for in this writ petition is, in effect, to appoint the petitioner in an aided post. The petitioner would seek a Mandamus to the Government to provide aid to the post in which she is working to enable the fifth respondent to continue her in service.

The Supreme Court, in ***STATE OF ASSAM*** *v.* ***AJIT KUMAR SARMA,*** held that:

> "…….What grant the State should make to private educational institutions and upon what terms are matters for the State to decide. Conditions of these grants may be prescribed by statutory rules; there is however no law to prevent the State from prescribing conditions of such grants by mere executive instructions which have not the force of statutory rules ….."

> "….. Where such conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. If it decides not to accept the instructions it will naturally not get the grant-in-aid which is contingent on its accepting the conditions contained in the instructions. On the other hand, if the college accepts the conditions contained in the instructions, it receives the grant- in-aid. If however having accepted the instructions containing the conditions and terms, the college does not carry out the instructions, the Government will naturally have the right to withhold the grant-in-aid. That is however a matter between the Government and the private college concerned. Such conditions and instructions as to grant-in-aid confer no right on the teachers of the private colleges and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced. It is only for the Governing Body of the College to decide whether to carry out any direction contained in mere administrative instructions laying down conditions for grant-in-aid. Further it is open to the Governing Body not to carry out any such instruction which is not based on rules having statutory force, and it will then be naturally open to the State to consider what grant to make. But if the Governing Body chooses to carry out the instruction, it could hardly be said that the instruction was being carried out under any threat. It is certainly not open to a teacher to insist that the Governing Body should not carry out the instruction. The rules for the purpose of grant-in-aid being - as in this case - merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a mandamus asking for the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them because of the grant-in-aid being withheld in whole or in part. Such mere administrative instructions even though called rules are only a matter between the Governing Body and the State through the Director and cannot in our opinion form the basis of a petition for writ under Art. 226 by a teacher….."

This judgment of the Apex Court in ***AJIT KUMAR SARMA*** (supra 1) was followed by a Division Bench of this court in ***Y.SIDDA REDDY*** *v.* ***GOVERNMENT OF ANDHRA PRADESH***. The law laid down in the aforesaid judgments is that the conditions or instructions as to grant-in-aid confer no right of any kind on teachers of private colleges and they cannot apply to the High Court for a Mandamus asking for enforcement of the instructions providing grant-in-aid, even if indirectly there may be some effect on them because of the grant-in-aid being withheld in whole or in part. In view of the law laid down by the Supreme Court and the Division Bench of this court, no relief can be granted in favour of the petitioner.

The writ petition accordingly fails and is dismissed. No order as to costs.

Sri N.Bhaskara Rao, learned counsel for the petitioner, would submit that the petitioner has been working in the school for more than 18 years. Needless to state that this order shall not preclude the fifth respondent college from continuing the petitioner in service.

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RAMESH RANGANATHAN, J

Date: 30-01-2006

Prv